

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA, : Case No. 3:10 CR 00522  
Plaintiff, : JUDGE JAMES G. CARR  
-vs- :  
ALEX DAVID COOK, : **MOTION FOR RELEASE PENDING**  
Defendant. : **APPEAL**

Now comes the Defendant, Alex David Cook, by and through undersigned Counsel, and hereby requests this Honorable Court to release Mr. Cook pending the appeal in this case. In support of this Motion, Mr. Cook states the following:

**I. Procedural History**

On November 12, 2010, Mr. Cook was arrested. His bond was set at \$10,000 unsecured, and the Federal Public Defender's Office was assigned to represent him. On December 8, 2010, Mr. Cook was indicted on one count of knowingly distributing child pornography in violation Title 18, United States Code, Section 2252A(a)(2)(A). On December 20, 2010, he was arraigned, entered a not guilty plea, and the bond was continued.

On April 6, 2011, a Superseding Indictment was issued. Two additional charges were added: knowing receipt of child pornography in violation of Title 18, United States Code, Section 2256(2); and knowing possession of child pornography, in violation of Title 18, United States Code, Section 2252(a)(4)(B). On April 11, 2011, Mr. Cook entered a plea of not guilty, and bond was continued.

On August 2, 2011, undersigned Counsel filed a Notice of Appearance and a Motion to Continue Trial. On August 4, 2011, the Court denied the Motion to Continue. On September 6, 2011, a jury was seated. On September 9, 2011, the jurors returned a guilty verdict on all counts. The Court continued Mr. Cook on pre-trial release.

On February 24, 2012, Mr. Cook filed a Motion for a New Trial. The Court denied the Motion. Sentencing is scheduled for June 18, 2012.

## **II. Factual Assertions**

It is anticipated that the Court will impose a prison sentence. It is also anticipated that Mr. Cook will request that he be allowed to surrender to the Federal Bureau of Prisons. However, Mr. Cook and his family are prepared that he will be taken into custody at the time.

## **III. Memorandum of Law**

18 United States Code Section 3143(b)(1) states, in pertinent part, that

... the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment ... be detained, unless the judicial officer finds –

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in

(i) reversal,

(ii) new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in subparagraph (8B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

**a. Mr. Cook is unlikely to flee or pose a danger to the safety of any other person or the community if released. (18 U.S.C. Section 3143(b)(1)((A)).**

This Court released Mr. Cook on bond at the time of his arraignment and continued his bond after the verdict was announced. In sum, he has been on bond without incident for almost two years. He does not have a passport, and has no assets which would allow him to flee the jurisdiction, let alone the country. Moreover, Mr. Cook does not pose a danger to the community. He has no prior criminal record, and according to the testimony of Dr. Wayne Graves at trial, he does not show any indications of being a danger to children. *See* Sentencing Memorandum, Document 71, p. 4. Therefore, Mr. Cook respectfully submits that this Court can find by clear and convincing evidence that he will not flee and that the community would be safe if were to be on bond pending appeal.

**b. The forthcoming appeal in this case is not for the purpose of delay and will raise substantial questions of law or fact likely to result in a reversal or a new trial... (18 U.S.C. Section 3143(b)(1)(B)(I) and (ii)).**

Mr. Cook will timely file his Notice of Appeal. Additionally, he will request that either this Court or the Sixth Circuit appoint Jeffrey Gamso as appellate counsel. Based on conversations with Mr. Gamso, who has met with Mr. Cook and his family as well as familiarized himself with the case, present Counsel believes that the appeal will raise the issue of the error which Mr. Cook respectfully submits that this Court committed by denying his Motion to Continue Trial, filed on August 4, 2011. Mr. Cook submits that this issue is meritorious, and therefore, the appeal will not be for the purpose of delay.

Therefore, Mr. Cook submits that the issue that he will raise on appeal, if successful, will likely result in a reversal or a new trial.

#### **IV. Conclusion**

Based on the foregoing, Alex Cook respectfully submits that he has demonstrated, by clear and convincing evidence, that he is unlikely to flee or pose a danger to the safety of any other person or the community; that the forthcoming appeal will not be for the purpose of delay and will raise a substantial question of law and fact that is likely to result in a reversal or new trial. Therefore, he prays that this Court release him pending the appeal in this case.

/s/Elizabeth Kelley  
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#### SERVICE

I certify that on June 17, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Elizabeth Kelley  
ELIZABETH KELLEY